update. In some cases the next biannual update may not be required until June 1999. Thus, under Part 254, some operators would not be required to calculate worst-case oil spills until June 1999.

However, these proposed OSFR regulations would become effective, and evidence of OSFR must be submitted by a date that will almost certainly be far earlier — 60 days after the publication date of the final rule. Amended proposed Section 253.44, 62 Fed. Reg. 15639 (April 2, 1997). And, a worst-case oil spill calculation must be performed in accordance with Part 254 (not Part 253) to meet the requirements of Section 253.14, quoted above. Based upon the expected effective date of Part 253, operators would be expected to make a worst-case oil spill analysis far in advance of the effective date of Part 254, which actually requires that the worst-case analysis be done. To eliminate this burdensome inconsistency, Industry recommends that the MMS require the effective date of Part 253 to coincide with the effective date of the provision of Part 254 that requires the worst case calculation to be made. Specifically, Industry recommends that the effective date be changed to require submission of OSFR within 120 days of the end of the fiscal year after the first Part 254 Facility Response Plan, including worst case spill scenario, has been submitted to the Minerals Management Service. Of course, during the period before the effective date of the new OSFR regulations, the existing OSFR rules would remain in effect, assuring that OSFR coverage would be fully maintained.

Moreover, by coordinating the effective dates of the two regulations, the agency could alleviate a second problem, that of requiring operators to demonstrate OSFR twice in one year for the same COF. This problem could arise because under existing financial responsibility rules, each lessee must submit its annual certification of financial responsibility within 120 days of the end of its fiscal year. Should Part 253 become effective shortly before or immediately after an operator

files its annual certification, then that operator would have to resubmit OSFR under the effective date of the new rule. But, by tying Part 253's effective date to the effective dates of Part 254, it would also ensure that operators would not have to submit OSFR twice in one year. Accordingly, Industry urges the MMS to tie the effective date of Part 253 to Part 254. This would greatly reduce paperwork and the regulatory burden on both the regulated community and the Minerals Management Service without compromising oil spill response capability.

Should the MMS conclude that, notwithstanding the request set out above, it will have a separate effective date for Part 253, it should not make that effective date only 60 days after the publication of the final rule, as is now proposed. The sixty-day period would be entirely inadequate, because of the time period required to make OSFR arrangements. Experience gained when the Coast Guard regulations requiring COFRs for vessels were issued provides guidance as to the difficulties that the oil and gas industry will encounter in trying to purchase insurance to meet these proposed regulations.

In the case of vessels, the traditional insurance coverage for pollution is provided by Protection and Indemnity (P&I) clubs. The P&I clubs stated very early in the drafting of the vessel regulations that they did not intend to provide insurance in compliance with OPA 90. Their two main concerns were the "direct action" and natural resource damage assessment ("NRDA") features. Far into the regulatory process, once it became clear that regulatory relief would not be provided, the insurance industry and vessel owners began meeting to develop insurance alternatives. Two specialized insurers emerged only two weeks before implementation of the regulations to offer vessel coverage in compliance with OPA 90.

Although the problems for insurers created by the "direct action" requirement have been reduced under the proposed MMS regulations when compared with the Coast Guard regulations, it is still doubtful that the traditional general liability insurance industry, which provides the oil and gas industry with pollution insurance, will offer policies in compliance with OPA 90. The NRDA issues also continue to create problems for the traditional insurance industry. Thus it is very likely that new insurers will have to be created to provide OPA 90 coverage for companies with offshore facility risk. (The insurers created for the vessel exposure are highly specialized and were chartered just to insure the vessel risks.) Since the limits needed by the oil and gas industry can be up to $150 million dollars, a very significant amount of insurance capacity will have to develop. This will require large amounts of capital which will have to be raised through subscription. Additionally, once these insurers are capitalized, they will have to be approved by the MMS before they are acceptable since they will not have a Best rating upon formation. The capital subscription and MMS approval are lengthy processes, probably taking at a minimum six months to complete. It is doubtful that any effort to start the capital subscription will begin before the regulations are issued since this is an expensive process for the companies involved and they will want assurances that alternatives will not be available to the oil and gas industry once the final regulations are issued.

Thus, even if it does not accept the Industry proposal to tie the effective date of Part 253 to Part 254, as described above, the agency should change the proposed effective date to make it at least 180 days after the publication date of the final rule.

6. The MMS Should Improve the Self-Insurance Provisions: Sections 253.21-28

A. The Proposed Regulations

Sections 253.21 through 253.28 of the proposed regulations relate to the use of self-insurance as Oil Spill Financial Responsibility ("OSFR") evidence. For an applicant wishing to qualify as a self-insurer, the proposed regulations provide two alternative tests to determine the amount of self-insurance allowed as OSFR evidence: (1) a "net worth" test (section 253.25) and (2) an "unencumbered net asset test" (section 253.28) under which the applicant must pledge unencumbered assets. These proposed tests represent a change from the formulae that the MMS currently uses to determine qualification as a self-insurer.

Under the proposed formula for the net worth test, the maximum amount of self-insurance allowed as OSFR evidence is the lesser of :

(1) The total **value** of the stockholders'/owners' equity listed on the balance sheet divided by ten, or

(2) The net **value** of plant, property, and equipment shown on the balance sheet multiplied times the ratio of the net **value** of identifiable U.S. assets compared to the net **value** of the identifiable total assets. That resulting number is then divided by ten.

Under the proposed formula for the unencumbered net asset test, the maximum amount of self-insurance allowed as OSFR evidence is the lesser of :

(1) The total **value** of the stockholders'/owners' equity listed on the balance sheet divided by four, or

(2) The **value** of the unencumbered U.S. assets divided by two.

For each test the applicant must support the qualifying information with audited financial statements. Additionally, for each test the applicant must submit a letter from the company's treasurer providing certain relevant information particular to the alternative test chosen.

These comments are first addressed to the two new formulae proposed by the MMS for computing the amount of self-insurance allowed as OSFR evidence. The comments will then offer suggestions for additional or alternative formulae or methodologies to be considered.

B. MMS' Proposed Formulae.

The formulae set forth in the proposed regulations were difficult to analyze because many of the key terms found in the respective equations were undefined. In order to provide for ease and simplicity of administering the tests as set forth in the proposed regulations, the MMS should confirm that a company can interpret the terms "identifiable U.S. assets," "identifiable total assets," "plant, property, and equipment," "unencumbered and unimpaired U.S. assets," and "contingent encumbrance" in the context of either a Form 10-K, a Form 20-F, or a private equivalent audited financial statement prepared in accordance with the generally accepted accounting practices of the United States or other international accounting practices determined to be equivalent by MMS. This confirmation in the proposed regulations should provide comfort to the applicant that the information as set forth in the audited financial statements will be sufficient for the MMS for purposes of performing the calculations prescribed by the formulae.

The tests as set forth in the proposed regulations repeatedly use the word "value" in regard to the various elements of the computations to be performed. Since the term "value," from an accounting perspective, is subjective and could relate to concepts such as fair market value, the proposed regulations should refer to "amount" or "figure" so that it is clear that an applicant may

use the standard historical cost-based financial statement numbers in performing the computations. All subsequent comments herein relating to the self-insurance tests will use these terms rather than the word "value."

Specifically in regard to the unencumbered net asset test, the MMS should clarify that the applicant must identify and pledge assets equal in value only to the amount of self-insurance OSFR evidence sought. For example, under the formula for the unencumbered net asset test the applicant must calculate unencumbered assets divided by two. Therefore, in order to reach a self-insurance allowable amount of $35 million, $70 million of unencumbered assets must be identified. But, only $35 million must actually be "pledged," not the full $70 million.[5]

C. Alternative Testing Formulae

Both the net worth test and the unencumbered net asset test as set forth in the proposed regulations meet some of the stated goals of the MMS in regard to providing evidence of OSFR. However, each test, as proposed, appears to fall short in establishing an appropriate financial hurdle, and the unencumbered net asset test specifically would be difficult to administer since in all probability monitoring and securing the pledges would be burdensome on both the MMS and the applicants.

MMS has expressed a need to assure that companies remain viable for six years in the future to respond to claims that may result from a potential oil spill. As a result, MMS desires to

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[5] Further, it appears that under the proposal, when assets are pledged, they must be held for the fiscal year in question. See transcript of June 5 workshop. The agency should provide that the precise identity of the pledged assets can be changed during the fiscal year, if assets of equal or greater value are substituted.

be conservative in its calculations. While this time frame and need for conservatism are understandable, the proposed formulae appear to be far more conservative than is necessary. Company assets as reported in audited financial statements and 10K submittals are already conservative in that book value, not true market value, is reported. The MMS has previously stated that the divisor of 10 is not traceable to any precedent in financial responsibility law and that 10 is not necessarily a number which has been determined with a great degree of precision. Since MMS wants to assure that the company has adequate financial resources six years into the future, 6 would appear to be an adequately conservative and more justifiable divisor.

There exists a wide variety of potential operators who would want to qualify as self-insurers, and these applicants have varying characteristics in terms of company size, scope of operations, years in the industry, and ownership. In light of these circumstances, the following additional or alternative proposed testing methodologies should be considered. These additional tests should both meet the goals of the MMS and also enable financially viable firms to utilize self-insurance as adequate evidence of OSFR without imposing undue risk on the MMS.

1. Net Worth Test I: This suggested test is identical to the proposed MMS net worth test except that the applicant may use the **greater** of the computed amounts as the maximum amount allowable as evidence of OSFR. Some newly-formed companies may not have built up significant stockholders' equity but nonetheless have substantial assets that could be utilized as evidence of adequate self-insurance.

2. Net Worth Test II: This suggested test is similar to the proposed MMS net worth test except that the divisors have been reduced from 10 to 6. The methodology for this suggested test is as follows:

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by 6.

(b) Divide the net amount of identifiable U.S. assets by the net amount of identifiable total assets.

(c) Multiply the net amount of plant, property, and equipment shown on the balance sheet by the number calculated under item (b) and divide the resultant product by 6.

(d) The greater of the numbers calculated under items (a) and (c) is the maximum allowable amount an applicant may use to demonstrate OSFR under this method.

3. Net Worth Test III: This suggested test is similar to the proposed MMS net worth test except that it takes into account insurance proceeds that would be paid under control of well and/or pollution liability policies in the event of a loss. The insurance policy amounts should be included in the calculations because these funds generally will be available to pay losses. The insurance funds are legitimate identifiable current assets in the form of cash or accounts receivable following the occurrence of a covered claim. Regulated companies would be expected to fully reinstate aggregate policy

limits subsequent to any impairment of these amounts, and auditors could certify the amount of any non-compliant insurance. For contingency purposes, the policy limits are discounted to 80% of the total limits. The methodology for this suggested test is as follows:

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by 6.

(b) Divide the sum of the net amount of identifiable U.S. assets plus 80% of the applicable pollution insurance limits by the sum of the net amount of identifiable total assets plus 80% of the applicable pollution insurance limits.

(c) Multiply the sum of the net amount of plant, property, and equipment shown on the balance sheet plus 80% of the applicable pollution insurance limits by the number calculated under item (b) and divide the resultant product by 6.

(d) The larger of the numbers calculated under items (a) and (c) is the maximum allowable amount an applicant may use to demonstrate OSFR evidence under this method.

4. Standardized Measure of Discounted Future Net Cash Flows Relating to Proved Oil and Gas Reserves Test: This proposed test utilizes the

"standardized measure of discounted estimated future net cash flows," an accounting figure defined by the Securities and Exchange Commission (SEC) and contained in the Form 10-K filed by every publicly-traded company. The "standardized measure of discounted estimated future net cash flows," commonly referred to as "SEC-10," is used by the financial community as a guideline of a company's capacity to incur and service debt.

The calculation of SEC-10 begins with an estimate of future cash inflows based on SEC-defined estimates of proved oil and gas reserves. Proved reserves are defined as those quantities of crude oil, natural gas, and natural gas liquids which, upon analysis of geologic and engineering data, appear with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Proven reserves are limited to those quantities of oil and gas which can be expected, with little doubt, to be recoverable commercially at current prices and costs, under existing regulatory practices and with existing conventional equipment and operating methods.

Future net cash flow is determined by first totaling the cash inflows expected from proved reserves over a period of time (commonly, three years). In order to arrive at net cash flow, future expected production costs, development costs, and income tax expense are deducted from the expected cash inflow amount.

The future net cash flow amount would then be discounted at a 10% annual rate to yield the standardized measure of discounted future net cash flow, or SEC-10. This figure is an estimate of the present value of the net cash flow from a company's existing producing properties.

The SEC-10 is potentially a more accurate measure of a company's capacity to pay clean up costs and damages in the event of an oil spill. The general acceptance by the financial community of the SEC-10, an SEC sanctioned calculation found in every company's Form 10-K, should satisfy the MMS that the measure reflects current business practices and economic conditions and can be derived from published, audited reports and utilized with a minimum amount of effort.

In order to add a measure of conservatism to this proposed test, the SEC-10 amount could be reduced by a company's long-term debt number, and the net result could then be divided by two. This resulting amount would then be the maximum allowable amount to be utilized as evidence of OSFR.

5. Net Asset Test: This suggested test is similar to the proposed MMS net unencumbered asset test except that it takes into account insurance proceeds that would be paid under control of well and/or pollution liability policies in the event of a loss. The same logic discussed for the Net Worth Test III applies in this case. The methodology for the suggested test is as follows:

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by 4.

(b) Add the amount of unencumbered U.S. assets to 80% of the applicable pollution insurance limits and divide the sum by 2.

(c) The greater number calculated under items (a) or (b) is the amount an applicant may use to demonstrate OSFR evidence under this test.

6. Working Capital Test: This suggested test mirrors the working capital test for vessel financial responsibility. Working capital, for this test, equals current U.S. assets less current worldwide liabilities.

D. Industry Opposes Use of Regression Analysis as a Part of Self-Insurance Tests

The recommendation made by the Independent Accountant Report that the MMS should utilize some sort of regression analysis as part of the self-insurance tests should be rejected. The development and maintenance of a suitable model for regression analysis would be costly and would add an unnecessary level of complexity to what should otherwise be very straightforward calculations.

E. The Regulations Should Recognize Foreign Equivalent Documentation

The MMS should amend Section 253.23(a)(2) to expressly provide that non-U.S. responsible parties shall be allowed to submit Form 20-F in lieu of a Form 10-K. Further, all

references to the use of U.S.-based documentation should be modified to note that foreign equivalent documents that the MMS deems to be reasonably acceptable could be used to support the relevant figures.

7. The MMS Should Incorporate Suggested Improvements on Insurance As OSFR Evidence: Section 253.29

Section 253.29 of the proposed regulations defines how insurance can be used to satisfy the OSFR requirements. A party's financial responsibility is determined by following procedures outlined under Section 253.13 of the regulations, and the use of insurance to meet the OSFR requirement is subject to the specific language of Section 253.29.

> § 253.29(c)(2) -"No more than four insurance layers may be used including the base layer."

MMS should not impose such a limit because there are no technical restrictions within the insurance industry itself which would limit to four the total number of layers of insurance purchased by an operator to meet its financial responsibility.

> § 253.29(c)(3) -"If the total amount of insurance is $35 million or less, it must not be layered. Insurance for greater amounts may be layered in multiples of $35 million. If the amount of insurance required is $150 million, one $45 million layer is allowed."

This requirement places an unreasonable burden on a party demonstrating OSFR by insurance because it restricts the layer size to $35 million, which may not be the most practical or economical layer size around which to build coverage. Industry recommends that this requirement be modified , and that companies be permitted to obtain insurance in any amounts, so

long as it adds up to the required amount. Implementing this suggestion would not have any impact on the security of the insurance.

§ 253.29(c)(4) -"Each insurer's participation in the covered insurance risk must be expressed as a percentage of a whole layer with no intermediate, horizontal layering permitted."

This provision allows a layer to be subscribed to by multiple insurers on a quota share (proportional) basis. This is an important feature, since one of the premier markets for pollution liability coverage has historically been the insurance market known as Lloyds of London (which is in reality a group of syndicates supported by private and corporate capital, rather than an insurance company). However, to include language more understandable to the insurance community, the terms "quota share" and proportional should be added. Industry recommends that Section 253.29(c)(4) be modified to read as follows: "Each insurer's participation in the covered risk must be on a proportional (quota share) basis, must be expressed as a percentage of the whole layer, and the layer must contain no intermediate, horizontal layering."

§ 253.29(c)(6) -"Each insurance layer submitted as OSFR evidence must be presented on a separate Form MMS 1019."

Form MMS 1019 requires that both the broker and all insurance companies underwriting the insurance sign the form. The standard in the industry for acknowledging insurance coverage to third parties is a certificate of insurance which, for insurance purchased through a broker, is prepared and signed by the broker. Insurance companies provide authority to brokers to issue insurance certificates.

Industry understands that the MMS is concerned about brokers issuing evidence of insurance without proper authorization. The insurance industry has safeguards designed to prevent this from occurring. In addition, brokers typically carry "errors and omissions" insurance that would provide coverage if they inadvertently issue a certificate in error. Policing brokers and their actions is appropriately an insurance industry function, and should not be undertaken by the oil and gas industry or the MMS. It would be entirely reasonable for the MMS to accept a certificate of insurance from a broker as adequate evidence of coverage in the amount specified.

The requirement that each Form MMS 1019 be signed by both the broker and the insurer will be extremely burdensome for all parties involved. The requirement will significantly increase the transaction costs of purchasing the insurance, and this cost will ultimately be paid by the insured. Finally, there is little if any benefit added by the insurer's signature on the Form. Therefore, for insurance arranged by a broker, Industry recommends that the regulations be changed to require only the broker's signature, and not the insurer's signature also.

Finally, the regulation does not address how insurance purchased directly by the insured from the insurer will be evidenced to the MMS. This practice is becoming more common, particularly among large purchasers of insurance, and the regulations provide a method for evidencing such insurance to the MMS. In the situation of direct purchase, it would be appropriate to require that each insurer signs the certificate, but there should be no requirement that the broker sign the certificate.

MMS specifically invited comments on the subject of limiting action against a guarantor to cases when all responsible parties have denied or failed to pay on grounds of insolvency or bankruptcy. Industry supports MMS efforts to limit recourse to guarantors to the extent

practicable under the Oil Pollution Act. Provisions allowing early recourse to guarantors make it more difficult for operators to obtain needed insurance, and result in higher premiums for the insurance that is obtained since the guarantor is accepting a higher risk. Recourse to guarantors should be a final resort, used only if all responsible parties are unable to pay.

8. The MMS Should Clarify Its Rule on "Add-Ons" and "Drops"; Section 253.42

Proposed Section 253.42 states that "if you want to add lease, permit or RUE areas not included in your initial OSFR demonstration," the appropriate form must be submitted "at least 30 days before the areas are to be added." Similarly, areas to be dropped must reach the MMS 30 days before the areas are to be dropped.

The agency should add language to clarify the effective date of an "add-on" or "drop." For example, does MMS consider the add-on date to be the effective date of an acquisition; the closing date of the acquisition; the date on which operations change from one operator to another; the date the notification of the change is submitted to the MMS; or the date MMS approves the change in operator? All of these dates are different, and each could be a rational choice for an "add" date. Plainly, clarification is required if this provision is to be maintained.

The proposed 30 days advance notice is impractical in many cases, since ownership transfers, farm-outs, and other transactions that could require notice often close in less than 30 days. A requirement for 30 days advance notice could unnecessarily constrain operator activities. As long as the level of financial responsibility required of a company does not change, Industry is uncertain why MMS should require advance notice of a transaction.

Moreover, notifying MMS of every change in ownership for OSFR is unnecessary and constitutes an excessive paperwork burden for both Industry and MMS. Notifying MMS of all "add-ons" and "drops" will result in numerous daily transactions, a volume of paperwork that could be overwhelming for MMS staff to process. Under existing lease rules, MMS and appropriate state agencies already receive notification of all changes in ownership. It should not be necessary to duplicate this notification on different forms and a different schedule for this rule.

To fulfill its obligations under this rule, the MMS needs assurance that financial responsibility is provided in the appropriate amount for each COF. Under Industry's proposal that the designated operator provide financial responsibility, MMS would already know which party should be providing financial responsibility for a given lease, permit, or RUE. "Add-ons" and "drops" would be covered by existing notifications. Therefore, MMS should only require notification under this rule in two cases: (1) where a facility is acquired or sold that changes the amount of financial responsibility that must be provided; and (2) when a facility is acquired by a company that does not have an existing certificate of financial responsibility on file with MMS. Requiring paperwork is reasonable in these two instances. In both cases, the evidence of financial responsibility should be provided at the time the application for assignment is submitted to the MMS.

9. The Reporting Obligations and Forms are Burdensome and Unnecessary, and Should Be Modified Section 253.40, .42 and Forms

The reporting burden estimates presented in the proposal (i.e., applicant information time commitments, 62 Fed. Reg. 14057) dramatically underestimate the actual time commitments required for calculating, certifying and updating relevant asset and financial information. This is

problematic for large companies with a substantial number of business units, divisions, subsidiaries and operating companies since the "corporate" balance sheet is likely to be used for self-insurance certifications. Each operating unit will need to submit lease/operator revisions based upon business activities that will, in turn, require new corporate revisions. These irregular, but frequent revisions have the potential to make this reporting responsibility a monthly, not annual, process. These reporting requirements are also quite burdensome for smaller companies, which may be required to add additional administrative staff solely to comply with these requirements.

MMS can simplify paperwork by incorporating financial responsibility into existing review and approval processes for POEs, DOCDs, APDs, sundry notices, and similar filings. This would not only allow MMS to assure that the operation was covered by appropriate OSFR, but reduce the paperwork burden on both MMS and industry. If the operator has a current OSFR demonstration on file with the MMS in an amount sufficient to cover the demonstration that would be required for the operation for which paperwork is being filed, then no additional OSFR information should be required with the filing.

Regarding the proposed forms, industry submits that any applicant who demonstrates for all properties where it is the designated operator should not be required to complete and file Forms MMS 1021 (Lease Listing), MMS 1022 (Permit or RUE Listing), MMS 1023 (Lease Changes), or MMS 1024 (Permit or RUE Changes). At a minimum, applicants providing the maximum amount of $150 million in OSFR should not be required to submit these forms. These forms will impose a major continuing paperwork burden on operators and the MMS, and provide no essential information that is not available to the MMS from other sources. Applicants should

be required to file only a Form MMS 1016 and a Form MMS 1018 or 1019, depending on the method used to establish evidence of financial responsibility.

Further, although MMS may not have information identifying facilities of the designated applicant that are located in state waters, state agencies will have that information and MMS should work with the states to develop and maintain an appropriate database. The administrative burden associated with the proposal will cause particular disruption to smaller entities.

With particular reference to Form MMS 1016, the MMS should delete the third sentence in item 3, the certification statement, beginning "I agree to be liable for claims..." The Oil Pollution Act does not require a responsible party to certify that it will be liable for claims The purpose of MMS 1016 should be to establish that a responsible party or designated applicant has the financial capability to pay claims, rather than to establish liability.

Further, as to Form MMS 1017, Industry has stated elsewhere in these comments that this form is unnecessary and should be deleted. If the form is not to be deleted in its entirety, however, then the third sentence in item 3, the certification statement, beginning "I certify that my company will be jointly, severally and strictly liable,..." should be deleted. The Oil Pollution Act does not require a responsible party to certify that it will be jointly , severally and strictly liable.

Since MMS has data on covered facilities elsewhere, Industry suggests eliminating MMS Forms 1021 and 1022 for all or most operations. However, as discussed at the June 5 workshop, this form asks for worst case discharge on a different basis from how it is calculated for compliance with oil spill response planning. For example, the form requests a WCD amount for

the entire lease, while spill response plans are by facility. If MMS does not eliminate these forms, they should be modified to be consistent with oil spill response plans.

Under the current financial responsibility program administered by MMS for the OCS, paperwork processing has been a major source of concern for operators. Processing is often not rapid enough to accommodate changes in plans. Operators and the MMS often have to agree to start operations based on verbal approvals. Without these verbal approvals, costly delays in initiating drilling or other operations would result, simply because paperwork lead time is excessive. MMS should design the new financial responsibility program with minimal submittals/approvals and avoid the paperwork problems experienced in the current program.

10. The MMS Economic Analysis Fails To Satisfy The Small Business Regulatory Enforcement Fairness Act ("SBREFA") And The Regulatory Flexibility Act ("RFA")

The MMS has recognized that the proposed rule affects small oil and gas exploration, production and transportation businesses,[6] but has greatly underestimated the number affected. The MMS states that:

> "approximately 20 of the oil and gas businesses operating in State coastal waters are subject to this proposed regulation. We consider 8 of those 20 to be large businesses because they each employ more than 500 people. All but 3 of the 12 small businesses in this group currently demonstrate or have demonstrated $35 million in OSFR under current regulation."

Id. at 14057, col. 2.

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[6] 62 Fed. Reg. 14057, col. 2. The MMS notes that a small business is a company employing 500 or fewer people. Id.

In other words, the MMS concludes that only three small businesses would be affected. The agency goes on to estimate that the three companies would have to make a $10 million OSFR demonstration. Because their annual premium would be $35,000 per company, the agency says, the total economic impact of the proposed rule would be $105,000 (3 x $35,000). Id.

The MMS assessment contains several flaws. First, the agency has misjudged the number of affected small businesses. A survey by IPAA and the Louisiana Independent Oil and Gas Association ("LIOGA"), reveals that far more small businesses would be affected. Here are the survey results:

		MMS Estimate	IPAA/LIOGA Survey Results
(1)	Number of small businesses affected by the regulation.	12	43
(2)	Of those small businesses affected, how many do not now provide $35 million under current regulations?	3	20

In its preliminary analysis, the MMS failed to identify 17 companies that had not previously been required to supply OSFR, but now must do so. The number of small businesses affected is therefore more than six times greater than the agency predicted in its preliminary analysis.

Further, the agency's assessment of impact on small businesses considers only one issue — the cost of annual insurance premiums for $10 million coverage. The assessment does not take into account disruptive effects for those companies that will have difficulty in meeting the $10 million requirement. According to the IPAA/LIOGA survey, fully fifteen companies will be required to make special arrangements to meet the $10 million requirement. This second

economic impact has not been addressed in any meaningful way. There are also economic effects associated with the additional administrative burdens imposed by the proposed rule. In this regard, Industry believes that the MMS has greatly underestimated the time expenditures necessary to fill out the numerous proposed forms, and has consequently underestimated the economic burden on small businesses.

SBREFA, in combination with the RFA, requires the MMS to consider, and take appropriate actions to reduce, the economic impact of proposed rules on small business. The RFA requires the agency to publish an initial regulatory flexibility analysis that identifies "any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities."[7] SBREFA amended Section 604 of the RFA to require a final regulatory flexibility analysis that includes a "description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available."[8] SBREFA also requires the agency to provide "a description of the *steps the agency has taken to minimize the significant economic impact on small entities* consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[9] This statutory language therefore directs the MMS affirmatively to consider and adopt less burdensome alternatives when appropriate for

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7 5 U.S.C. § 603(c).

8 5 U.S.C. § 604(a)(3).

9 5 U.S.C. § 604(a)(5) (emphasis added).

small businesses. In its final rule, the agency should assess more accurately the economic effects of its proposed rule on small businesses, and should follow the requirements of SBREFA and the RFA.

11. Responses To Specific Questions Raised by MMS

Question 1(a): Is the Proposed Collection of Information Necessary for the Proper Performance of MMS' Functions, and Will it Be Useful?

The MMS' stated objective is to use the information to establish a reference source of names, addresses, and telephone numbers of parties responsible for COF's and their designated agents and guarantors. In fact, the MMS and state oil and gas agencies currently have necessary information on mineral lessees and lease operators, geological and geophysical permittees, and owners of RUE's, because they are involved in regulating these entities on an ongoing basis. Additional paperwork is not needed to obtain this information.

The MMS and states, through existing leasing and permitting procedures, have the means to ensure that companies demonstrate the required financial capability for spill removal costs and damages. Particularly with regard to the OCS, the MMS should integrate the data requirements associated with OSFR into existing regulatory programs, rather than create separate and burdensome databases.

Question 1(b): Are the Estimates of the Burden Hours of the Proposed Collection Reasonable?

As discussed above, Industry believes that MMS has seriously understated the compliance burden required by this rule. Industry has, however, made a number of suggestions that would reduce this burden. In Section 10 of these comments the elimination of several forms is

suggested. Industry has also suggested that MMS combine the demonstration of financial responsibility with other filings to minimize the compliance burden.

Question 1(c): Do You Have Any Suggestions that Enhance the Quality, Clarity, or Usefulness of the Information to be Collected?

Industry has suggested that MMS Forms 1021 and 1022 be modified to request information consistent with existing oil spill response plans. Combining OSFR demonstration with other filings and databases will simplify evaluation of all information about an existing lease or facility, eliminating the need to check multiple forms or databases.

Question 1(d): Is There a Way to Minimize the Information Collection Burden on Those Who Must Respond?

In Section 10 of these comments, Industry recommends elimination or modification of several forms. Further, throughout these comments, Industry has urged streamlining and paperwork reduction with respect to numerous provisions.